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E-FILED: 9/24/09

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In Re:)	Case No. BKS-09-26973-MKN
)	Chapter 13
)	
STEPHEN CAMPBELL)	Hearing Date: October 22, 2009
PATRICIA CAMPBELL)	Hearing Time: 2:30 PM
)	
Debtor(s).)	Trustee: Kathleen Leavitt
)	
)	
)	

MOTION TO VALUE COLLATERAL, "STRIP OFF" AND MODIFY RIGHTS OF
HSBC/MS TO 11 U.S.C. §506(a) AND §1322

Debtor, STEPHEN CAMPBELL and PATRICIA CAMPBELL, by and through attorney Michael S. Terry, Esq. of the Law Offices of Barry Levinson, hereby move this Court for its Order valuing collateral and modifying the rights of Creditor HSBC/MS pursuant to 11 U.S.C. §506(a), and §1322, and Bankruptcy Rules 3012 and 9014. In furtherance of this motion, Debtor states as follows:

1. Debtor filed the above captioned Chapter 13, Case Number 09-26973-MKN on SEPTEMBER 11, 2009.
2. On the petition date, Debtor owned real property located at 6647 Star Glow Ct., Las Vegas, Nevada 89118, legally described as:
STARLIGHT HACIENDA Plat Book 60 Page 96 Lot 5
APN 163-26-311-005, (hereinafter the "Property").

- 1 3. The value of the Property was \$237,500.00 as of the petition date. See ZILLOW.COM
- 2 attached hereto as Exhibit "A".
- 3 4. As of the petition date, the Property was encumbered by a First Trust Deed in favor of
- 4 AMERICAS SERVICING CO., securing a note with a principal balance of
- 5 \$395,914.00.
- 6 5. As of the petition date, no equity existed in the Property above the claim of HSBC/MS
- 7 holds a Second Trust Deed securing a note with a principal balance of \$102,202.00.
- 8 This Second Trust Deed was wholly unsecured on the petition date and if the Property
- 9 were to be sold at auction, HSBC/MS would receive nothing with respect to the Second
- 10 Trust Deed.
- 11 6. The Debtor therefore takes the position that HSBC/MS's note secured by Second Trust
- 12 Deed is unsecured and should be reclassified as a general unsecured claim to receive
- 13 pro rata with other general unsecured creditors through the Debtors' Chapter 13 Plan.

14 LEGAL ARGUMENT

15 In *In re Zimmer*, 313 F.3d 1220 (9th Cir. 2002), the Court stated that a wholly unsecured

16 lien holder's claim can be modified and reclassified as a general unsecured claim pursuant to 11

17 U.S.C. §506(a), despite the anti-modification language in §1322(b)(2). Specifically, the Court

18 held:

19 Section 506(a) divides creditors' claims into "secured...claims" and

20 "unsecured claims." Although the conventional interpretation of

21 "secured" might include any claim in which the creditor has a

22 security interest in the debtor's property, § 506(a) makes clear that

23 the status of a claim depends on the valuation of the property. An

24 allowed claim of a creditor secured by a lien on property in which

25 the estate has an interest ... is a secured claim to the extent of the

26 value of such creditor's interest in the estate's interest in such

27 property ... and is an unsecured claim to the extent that the value of

28 such creditor's interest ... is less than the amount of such allowed

 claim ...

 To put it more simply, a claim such as a mortgage is not a "secured

 claim" to the extent that it exceeds the value of the property that

 secures it. Under the Bankruptcy Code, "secured claim" is thus a

 term of art; not every claim that is secured by a lien on property will

 be considered a "secured claim." Here, it is plain that PSB

1 Lending's claim for the repayment of its loan is an unsecured claim,
2 because its deed of trust is junior to the first deed of trust, and the
3 value of the loan secured by the first deed of trust is greater than the
4 value of the house.

5 Since HSBC/MS'S Trust Deed is wholly unsecured (in that there is no equity above the
6 first mortgage in the Property), this Court should reclassify HSBC/MS'S second mortgage claim to
7 a general unsecured claim to be receive pro rata with like unsecured creditors. HSBC/MS should
8 also be stripped of its secured rights under State law and the recorded Second Trust Deed should
9 be expunged from the county records to give effect to this Court's order.

10 Moreover, Debtor may bring a motion to "strip off" HSBC/Ms Second Trust Deed and
11 is not required to file an adversary proceeding. See *In re Williams*, 166 B.R. 615
12 (Bankr.E.D.Va.1994), *In re Fuller*, 255 B.R. 300 (Bankr.W.D.Mich.2000), *In re Hoskins*, 262
13 B.R. 693 (Bankr.E.D.Mich.2001), *In re King*, 290 B.R. 641 (Bankr.C.D.Ill.2003), *In re*
14 *Millsbaugh*, 302 B.R. 90 (Bankr.D.Idaho 2003), *Dickey v. Ben. Fin. (In re Dickey)* 293 B.R. 360
15 (Bankr.M.D.Pa.2003), *In re Hill*, 304 B.R. 800 (Bankr.S.D.Ohio 2003); *In re Sadala* 294 B.R. 180
16 (Bankr.M.D.Fla.2003), *In re Fisher*, 289 B.R. 544 (Bankr.W.D.N.Y.2003), *In re Robert*, 313 B.R.
545 (Bankr.N.D.N.Y.2004), *In re Bennett*, 312 B.R. 843 (Bankr.W.D.Ky.2004).

17 WHEREFORE, Debtor prays that this Court:

18 1. Find that HSBC/MS is not a holder of a lien on the Property with respect to the
19 Second Trust HSBC/MS wholly unsecured Second Trust Deed from the Property pursuant to 11
20 U.S.C. Section 506(a);

21 2. Reclassify HSBC/MS claim as a general unsecured claim to be paid pro rata with
22 other general unsecured creditors through the Debtor's chapter 13 plan;

23 3. Such other relief the Court finds appropriate.

24 Dated: SEPTEMBER 24, 2009

25
26 /s/ Michael S. Terry, Esq.
27 Michael S.Terry, Esq.
28 Attorney for Debtor(s)

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EXHIBIT A



6647 Star Glow Ct

Las Vegas NV 89118

4 beds, 3.0 baths, 2,298 sq ft

Zestimate®: \$237,500

Get a free professional valuation

My Estimate:

Monthly Payment: \$ 1,016 edit

Rate Reduction Sale at Ditech

Bird's Eye View



See a

Home Info

Public Facts:

- Single family
- 4 beds
- 3.0 bath
- 2,298 sqft
- Lot 7,840 sqft
- Built in 1995

Neighborhood

Nearby Schools:

District:

Clark

Primary:

Marion B. Earl Eleme ...

Middle:

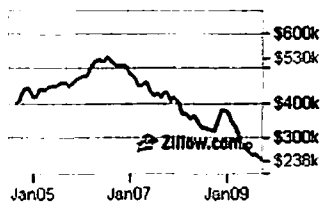
Grant Sawyer Middle ...

High:

Durango High School

See more Spring Valley schools

Charts & Data



See all charts & data

ZESTIMATE®: \$237,500

Value Range: \$171,000 -

\$254,125

30-day change: -\$6,500

Zestimate updated: 09/18/2009

Last sale and tax info

Sold 06/01/2005:

\$440,000

2009 Property Tax:

\$2,554

Work with an agent from
Prudential Americana Group,
REALTORS to get a professional
estimate.

First Name*

Last Name*

Email Address*

Phone Number*

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I am*

Please Choose One

Message (optional)

Or call (888) 321-0667

